

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	File No. EB-02-SJ-019
Concilio Mision Cristiana Fuente de Agua Viva)	
San Juan, Puerto Rico)	NAL/Acct. No. 200232680004
)	
)	FRN 0000-0131-85
)	

FORFEITURE ORDER

Adopted: September 30, 2002

Released: October 3, 2002

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of fifteen thousand dollars (\$15,000), to Concilio Mision Cristiana Fuente de Agua Viva (“Concilio”), licensee of radio station WRSJ(AM) and owner of antenna structure number 1010646 in Guaynabo, Puerto Rico for willful and repeated violation of Section 17.4(g) of the Commission’s Rules (“Rules”).¹ We also find Concilio willfully violated Sections 17.51 and 17.57 of the Rules.² The noted violations involve Concilio’s failure to have its antenna structure registration (“ASR”) number posted on March 26, 2002 and on April 2, 2002, failure to exhibit prescribed obstruction lighting, and failure to notify the Commission of a change in ownership of antenna structure number 1010646.

2. On May 14, 2002, the Commission's San Juan, Puerto Rico Resident Agent’s Office (“San Juan Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”)³ in the amount of fifteen thousand dollars (\$15,000) to Concilio. Concilio filed a response on July 8, 2002.⁴

¹ 47 C.F.R. § 17.4(g).

² 47 C.F.R. §§ 17.51 and 17.57.

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232680004 (Enf. Bur., San Juan Office, released May 14, 2002).

⁴ A response to a Commission *NAL* should be filed within 30 days of the issuance of the *NAL*. See Section 1.80(f)(3) of the Rules. Although Concilio’s response was filed more than 30 days from the issuance of the *NAL*, we will still consider it in this proceeding to ensure that we have a complete record.

II. BACKGROUND

3. On March 26, 2002, a Commission agent from the San Juan Office inspected Concilio's antenna structure number 1010646. The agent observed that the antenna structure did not have the ASR number posted on or near the base of the structure, or anywhere else on the property. The agent also observed that, although it was after local sunset at 7:30 p.m., none of the lights on the structure were lighted. On March 27, 2002, the agent conducted an inspection of station WRSJ(AM). At that time, the agent informed WRSJ's general manager and engineer that the lighting on the antenna structure was not functioning. The general manager and the engineer both informed the agent that the antenna structure required neither registration nor lighting because its overall height above ground was 153 feet. However, the station license lists the overall height of the antenna structure as 222.5 feet. On March 28, 2002, the agent returned to Concilio's antenna structure and measured it. The structure measured 230 feet, thus requiring it to be registered and lighted. Further, the ASR database lists the owner of the antenna structure as "Andres Gomez DBA ABG Realty Investment," which, according to Concilio, was the previous owner. On May 14, 2002, the San Juan Office issued an *NAL* to Concilio. On July 8, 2002, Concilio filed a response. In its response, Concilio does not dispute the violations. However, Concilio requests elimination of the forfeiture based on its assertion that the previous tower owner provided it wrong data and information which it relied upon. That information indicated that the tower was under 200 feet and thus did not require registration and lighting. Concilio further requests that we give special consideration to its non-profit status, although it has not submitted any information suggesting that its financial situation would make payment of the forfeiture difficult.

III. DISCUSSION

4. The forfeiture amount in this case is being assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁵ Section 1.80 of the Rules,⁶ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁷ In examining Concilio's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁸

5. Section 17.4(g) of the Rules requires that ASR numbers be displayed in a conspicuous place so that they are readily visible near the base of the antenna structure. Section 17.51 of the Rules provides that all red obstruction lighting shall be exhibited from sunset to sunrise unless otherwise specified. Section 17.57 of the Rules requires the owner of an antenna structure for which an ASR number has been obtained to notify the Commission upon any change in ownership information. Concilio does not deny that the violations alleged in the *NAL* occurred. Therefore, based on the evidence before us, we find that Concilio failed to post the ASR number on or near the base of its antenna structure

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁸ 47 U.S.C. § 503(b)(2)(D).

number 1010646 in willful⁹ and repeated¹⁰ violation of Section 17.4(g) of the Rules; failed to display red obstruction lighting from sunrise to sunset on March 26, 2002 in willful violation of Section 17.51 of the Rules; and failed to notify the Commission that it was the new owner of antenna structure number 1010646 in willful violation of Section 17.57 of the Rules.

6. Concilio contends that it relied on inaccurate antenna structure height information provided by the former owner which caused it to believe that the tower did not require registration and lighting. Also, according to Concilio, because the tower did not require lighting, it was not necessary to service the outages. However, the station license lists the overall height of the antenna structure as 222.5 feet, giving Concilio constructive knowledge of the actual height of the tower. Moreover, licensees are expected to know and comply with the Commission's rules.¹¹ Sections 17.4 and 17.7 of the Rules¹² require that antenna structures over 200 feet be registered. Section 17.4 requires ASR numbers to be posted on or near the base of the tower. Section 17.21 of the Rules¹³ requires that antenna structures over 200 feet be painted and lighted. It is also the licensee's responsibility to have accurate knowledge of its operations to apply the rules correctly. Further, although Concilio provides the results of an FAA study which concluded that the antenna structure would not exceed FAA obstruction standards and would not be a hazard to air navigation, that conclusion was also based on the same misinformation: that the tower was 153 feet tall.

7. Finally, Concilio requests that it be given special consideration because of its non-profit status. Section 1.80 of the Rules lists the downward adjustment criteria, which include: minor violation, good faith or voluntary disclosure, history of overall compliance, and inability to pay.¹⁴ While the Commission has discretion to reduce a forfeiture on other grounds, Concilio has not explained why a reduction of the forfeiture based on Concilio's non-profit status by itself would be appropriate. In this regard, we note that Concilio has provided no information suggesting that its financial situation would make payment difficult.¹⁵

⁹ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act..." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁰ Section 312(f)(2), which also applies to Section 503(b), provides: "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

¹¹ See *Econopage of Cleveland, Inc.* 16 FCC Rcd 2989, 2990 (Enf. Bur. 2001).

¹² 47 C.F.R. § 17.7.

¹³ 47 C.F.R. § 17.21.

¹⁴ 47 C.F.R. § 1.80, *note to paragraph (b)(4), Section II.*

¹⁵ As the *NAL* stated, in order for the Commission to consider a claim of inability to pay, the petitioner must submit: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. See *NAL* at para.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁶ Concilio Mision Cristiana Fuente de Agua Viva IS LIABLE FOR A MONETARY FORFEITURE in the amount of fifteen thousand dollars (\$15,000) for willfully and repeatedly violating Section 17.4(g) of the Rules and willfully violating Sections 17.51 and 17.57 of the Rules.

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁷ Payment shall be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200232680004, and FRN 0000-0131-85. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁸

10. IT IS FURTHER ORDERED that, a copy of this *Order* shall be sent by regular mail and Certified Mail Return Receipt Requested to Concilio Mision Cristiana Fuente de Agua Viva at P.O. Box 4039, Carolina, Puerto Rico 00984.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

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¹⁶ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁷ 47 U.S.C. § 504(a).

¹⁸ See 47 C.F.R. § 1.1914.